



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FBT/159238

PRELIMINARY RECITALS

Pursuant to a petition filed July 23, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on August 19, 2014, at Milwaukee, Wisconsin.

The issue for determination is

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Simone Johnson

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On or about July 14, 2014, the Petitioner either lost his wallet or it was stolen from him.
3. Between July 14 – 17, 2014, all of the benefits on Petitioner's EBT Quest card were used.

4. On July 22, 2014, the Petitioner reported his lost/stolen card to the agency. Petitioner was informed of the policy regarding replacement benefits and was advised to file for a fair hearing.
5. On July 23, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Beginning in 1999 the department began to provide an EBT card to FS recipients. The card allows the FS group to access FS benefits through the EBT account instead of using paper documents. See Wis. Admin. Code, §DHS 252.04(1).

In order to access the EBT account, each FS recipient receives a personal identification number (PIN) number. Also, identifying information such as Social Security number, date of birth, and mother's maiden name are generally needed in order to change the EBT PIN number, and the benefits cannot be used without the PIN number. Information about a person's PIN number should not be made available to anyone other than the user of the card.

Wis. Admin. Code, §DHS 252.18 discusses liability for lost FS benefits and provides in pertinent part:

Liability for lost benefits. Benefits will not be replaced if lost as a result of the loss or theft of the EBT card and PIN up to the point in time that the recipient reports the loss to recipient customer service. Benefits will not be replaced if lost due to fraud committed, in total or in part, by the recipient. The department shall assure the replacement of benefits lost after the recipient or representative reports to recipient customer service that the card has been lost or stolen. The department also shall assure the replacement of benefits that are lost due to system errors or malfunctions.

In this case, the Petitioner testified that he came in to the agency "right away" after his card was lost. He testified that he was told he needed to have identification in order for the agency to process his report. Petitioner testified that he contacted the bus company and was told he needed to wait three days to see if his wallet would be turned in. He went to the Social Security Administration to get a new card but had to have identification to verify his identity to get a new card. He was able to get verification from and eventually able to get a new card. He testified that all of this took time. When he came back to the agency, he was told to file a fair hearing request which he did.

The agency's case comments reflect that the Petitioner first reported the loss of his card on July 22, 2014. By that time, all of the benefits on his card had been used. The agency notes that the Petitioner never filed an application for replacement benefits and the agency did not actually deny him benefits. The agency's own case comments clearly indicate that no one at the agency advised the Petitioner to file an application but instead advised him to file for a fair hearing, which he did. The comments indicate that he was advised of the policy. This was, in effect, a denial of benefits by the agency as the Petitioner clearly had come to the agency to request replacement benefits.

Unfortunately, the case comments do not reflect that the Petitioner advised the agency prior to July 22, 2014 of the loss of the card. In accordance with the regulation cited above, I have no option but to conclude that the agency properly denied replacement benefits because the benefits were used by the time that the Petitioner reported the loss. I note that the majority of the benefits were used within hours of the Petitioner losing the card so unless he reported the loss to the agency on the same day that he lost it, the result would be the same.

CONCLUSIONS OF LAW

The Petitioner is not entitled to replacement benefits.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

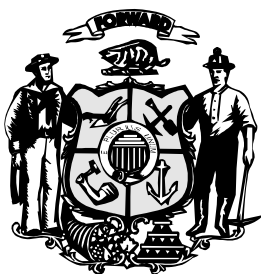
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 11th day of September, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 11, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability